

## **REMARKS**

### **Election/Restrictions**

Examiner has indicated that claims 37-40 are withdrawn from consideration "as being drawn to a nonelected invention, there being no allowable generic or linking claim". Claims 1-11 were previously withdrawn from consideration based on the reply of October 24, 2005. Therefore, it is understood that claims 12-36 are the subject of prosecution in this office action.

### **Information Disclosure Statement**

Examiner has indicated that the references filed in the information disclosure statement of February 20, 2004 were not considered because no English translation was provided.

Applicant acknowledges the Examiner's declaration.

Examiner also has indicated that most of the U.S. patent documents filed on March 30, 2005 were not considered due to redundancy in being cited on an earlier information disclosure statement filed November 7, 2003. Applicant has reviewed the earlier disclosure statement and acknowledges Examiner's declaration.

### **Claim Objections**

The Examiner has objected to claim 13 because of a typographical error. Claim 13 has been amended per the Examiner's suggestion.

The Examiner has objected to claim 16 due to informalities. Applicant respectfully submits that the informality applies to

claim 27 rather than claim 16. Claim 27 has been amended per the Examiner's request.

The Examiner has objected to claim 27 due to informalities. Applicant respectfully submits that the informality applies to claim 16 rather than claim 27. Claim 16 has been amended per the Examiner's request.

### **Double Patenting**

Claims 12, 19-21, 26-27, and 33 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 3-4 of U.S. Patent No. 6,776,504 ("504"). Although Applicant does not agree with the rejection, a terminal disclaimer in compliance with 37 CFR 1.321(c) has been filed to expedite allowance of the claims.

Claims 12-14, 17-23, 26, and 28-34 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of the "504" patent. Although Applicant does not agree with the rejection, a terminal disclaimer in compliance with 37 CFR 1.321(c) has been filed to expedite allowance of the claims.

Claims 12-36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-48 of copending Application No. 10/824890. Applicant respectfully disagrees with the rejection. Applicant submits that the filing date of Application No. 10/824890 is April 14, 2004, which is later than the filing date of the present invention. Under a provisional rejection on these grounds, no terminal disclaimer in compliance with 37 CFR 1.321(c) is needed against a pending application with a later filing date.

Claims 12-36 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5, 8-15, and 18-38 of copending Application No. 10/824890. Applicant respectfully disagrees with the rejection. Applicant submits that the filing date of Application No. 10/824890 is April 14, 2004, which is later than the filing date of the present invention. Under a provisional rejection on these grounds, no terminal disclaimer in compliance with a 37 CFR 1.321(c) is needed against a pending application with a later filing date.

#### **Claim Rejections**

##### **35 U.S.C. 102(b)**

##### **Claims 12-14, 17, 19, 21, and 23-25**

Examiner rejected Claims 12-14, 17, 19, 21, and 23-25 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,371,637 to Atchinson et al ("Atchinson"). Of these rejected claims, claim 12 is an independent claim from which the remaining claims depend. The Examiner's arguments and the references were carefully studied.

Atchinson discloses a flexible illumination device 20 that has a plurality of light emitting diode elements 32 that can be illuminated via electric power. As shown in FIGS. 1 and 2 of Atchinson, the device 20 comprises a substrate 37 and a housing 22, both of which are described as being formed from flexible material. This material is bendable to conform to a variety of surfaces, but because the material is flexible and will return to its previous state once a bending force is released, it must be coupled with some form of mounting means in order to hold its conforming shape (col. 10, lines 6-21).

The flexible Atchinson illumination device design is critical because it does not describe a device with a housing made from a rigid material that is capable of being bent into various embodiments that will hold their shape with or without the presence of a bending force. To further distinguish claim 12, it has been amended to that the elongated tube is "rigid" and "impact resistant".

This amendment is supported in the specification where the tube is described as being made from an impact resistant material that cannot generally be bent at room temperature but is capable of being bent into numerous embodiments once an external condition such as heat is applied. The printed circuit assembly 70 is sufficiently flexible so as to adapt to the desired shape the tube 32 is formed into. Once the tube 32 is bent into a desired shape and a bending force or bending mechanism is removed, the lighting system maintains said shape without the need of a coupled mounting mechanism.

Claim 12 is an independent claim from which claims 13-14, 17, 19, 21, and 23-25 depend. Applicants respectfully submit that Atchinson does not disclose, teach or suggest the elements of claim 12 and that claim 12 is allowable over Atchinson. Claims 13-14, 17, 19, 21 and 23-25 depend from claim 12 and as such are also allowable.

Claims 26, 28-30, 32-33, and 36

Examiner rejected Claims 26, 28-30, 32-33, and 36 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,559,681 to Duarte ("Duarte"). Of these rejected claims, claim 26 is an independent claim from which claims 28-30, 32-33, and 36 depend. The Examiner's arguments and the references were carefully studied.

Duarte discloses a flexible, adhesive lighting system 10 that has a plurality of light emitting elements 13 that can be illuminated via electric power. As shown in FIG. 3 of Duarte, the device 10 is coupled to a sub-laminate layer 30 on which at least two electrical conductors 36, 38 are located. Attached to said couplers is at least one light emitting device 40, which is covered by lens 44 so that the light emitting from the device 40 may be emitted in a desired angle.

The lens in the Duarte illumination device design is critical because it prevents the plurality of light emitting devices from giving the appearance of a continuous light source. The result of this design is that each of the plurality of lens covered light segments act as their own isolated light source, the lens preventing adequate dispersal of light to effectuate a continuous light source as would be seen, for example, in a neon light. By contrast, the invention of claim 26 comprises an elongated transparent tube that allows the plurality of light emitting diodes to appear as a continuous light source.

Applicants respectfully submit that Duarte does not disclose, teach or suggest the elements of claim 26 and that claim 26 is allowable over Duarte. Duarte does not disclose, teach or suggest a lighting system capable of dispersing light from the individual LEDs such that the appearance of a continuous light source is effectuated. Accordingly, claim 26 is allowable. Claims 28-30, 32-33, and 36 depend from claim 26 and as such are also allowable.

35 U.S.C. 103(a)

Claims 15, 18 and 20

Examiner rejected claims 15, 18 and 20 under 35 U.S.C. 103(a) as being unpatentable over Atchinson as applied to claim

14 and 12 and further in view of U.S. Patent No. 6,871,981 to Alexanderson et al ("Alexanderson"). Applicant respectfully submits that claims 15, 18 and 20 depend from allowable claim 12 and as such are also allowable.

Claim 22

Examiner rejected claim 22 under 35 U.S.C. 103(a) as being unpatentable over Atchinson. The Examiner's arguments and the references were carefully studied. Applicant respectfully submits that claim 22 depends from allowable claim 12 and as such is also allowable.

Claims 27, 31, and 35

Examiner rejected claims 27, 31, and 35 under 35 U.S.C. 103(a) as being unpatentable over Duarte as applied to claim 26, and further in view of Alexanderson. Applicant respectfully submits that claims 27, 31, and 35 depend from allowable claim 26 and as such are also allowable.

Claim 34

Examiner rejected claim 34 under 35 U.S.C. 103(a) as being unpatentable over Duarte. Applicant respectfully submits that claim 34 depends from allowable claim 26 and as such is also allowable.

**Allowable Subject Matter**

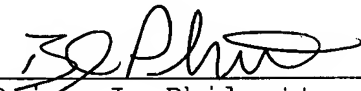
The Examiner has objected to claim 16 as being dependent on a rejected base claim, but would allow the claim if rewritten in independent form. This claim has been amended accordingly and is now in condition for allowance.

**CONCLUSION**

Applicants respectfully submit that all of the claims herein are allowable and request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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